

November 18, 2024

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

We write on behalf of the communities, employees and businesses that participate in and rely upon the U.S. fishing and seafood sectors. As you consider potential actions during the final months of your administration, we urge you to resist all proposals to create or expand any Marine National Monument in the United States Exclusive Economic Zone.

U.S. fisheries are a remarkable natural resource. They generate \$321 billion in sales, support nearly 2.3 million jobs, and are vital to countless American communities where alternative employment opportunities may be limited.¹ They are also recognized globally as a gold standard for fisheries management and marine conservation. The Magnuson-Stevens Act (MSA) requires U.S. fisheries to be managed to sustainable harvest rates and to achieve broader marine biodiversity goals. The result is that U.S. fisheries produce exceptional environmental outcomes, preserve vital cultural traditions, create jobs in communities across the United States, contribute to U.S. food security, and provide billions of nutritious meals with a carbon footprint dramatically lower than other leading proteins.

Between 2006 and 2016, five Marine National Monuments spanning almost 1.2 million square miles of ocean territory were created in the U.S. EEZ via Presidential Proclamations.² As a result, more than one-quarter of U.S. ocean territory is now part of a Marine Protected Area (MPA) where commercial resource extraction is prohibited—a higher level of such MPA coverage than almost any other nation. There is growing recognition, however, that further reliance upon the Antiquities Act to proclaim additional tracts of ocean territory off limits to fishing and other sustainable uses would cause significant negative impacts.

First and foremost, prohibiting the sustainable utilization of our nation’s waters via unilateral presidential action will harm the Americans we represent, employ and feed while failing to advance effective and durable marine conservation. As your administration noted in its *America the Beautiful* report:

The President’s challenge specifically emphasizes the notion of “conservation” of the nation’s natural resources (rather than the related but different concept of “protection” or “preservation”) recognizing that many uses of our lands and waters, including of working lands, can be consistent with the long-term health and sustainability of natural systems.³

¹ <https://media.fisheries.noaa.gov/2024-07/FEUS-2022-v04-0.pdf>, p.3.

² <https://www.fws.gov/glossary/marine-national-monument>

³ <https://www.doi.gov/sites/doi.gov/files/report-conserving-and-restoring-america-the-beautiful-2021.pdf>, p.10.

Indeed, the success of the U.S. fisheries management system is a leading example of precisely the kind of ‘win-win’ outcome your *America the Beautiful* initiative envisions, delivering for both the economy and the environment.

Further, as ocean ecosystems undergo increasingly rapid changes, the U.S. fisheries management system provides a far stronger framework for the establishment of effective and durable area-based conservation measures than does the Antiquities Act. As ocean warming causes shifts in the distribution of fish stocks and other marine biota, fisheries scientists see it as prudent to provide managers with flexibility to distribute fishing effort across areas over time in ways that best achieve defined objectives, including conservation objectives.⁴ Area-based conservation measures adopted by the eight Regional Fishery Management Councils now protect ecosystems covering a significant percentage of the U.S. EEZ.⁵ As evidenced by the regular five-year reviews of Essential Fish Habitat designations,⁶ Regional Fishery Management Councils routinely monitor and adapt area-based conservation measures based on the latest scientific assessments. Similarly, the Highly Migratory Species (HMS) Division of the National Marine Fisheries Service (NMFS) monitors and manages an extensive system of science-based spatial and temporal conservation areas for U.S. Atlantic HMS fisheries reflecting both MSA conservation mandates and U.S. obligations under the International Commission for the Conservation of Atlantic Tunas (ICCAT). Likewise, NMFS actively manages a range of area-based management measures for the conservation of U.S. HMS fisheries in the Pacific pursuant to the U.S. obligations under the Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC). The management actions of the Councils and NMFS are informed by the expertise of six Regional Fishery Science Centers⁷ and eight Council Scientific and Statistical Committees, a unique resource management system grounded in science and robust peer review. No such flexibility or expert review is afforded by the Antiquities Act. Rather, Marine National Monuments are created using static area-based protections and without the rigorous impact review required by the normal rulemaking process. They are a tool that will more often prove ill-suited to the dynamic ocean management challenges that lie ahead.

Additionally, the contrast between the processes by which these different area-based conservation measures are implemented could not be more clear. Regional Fishery Management Council actions follow a rigorous, transparent and stakeholder-informed process, designed to

⁴ This point was made by leading marine scientists in response to legislation that sought to mandate the creation of Marine Protected Areas banning commercial fishing in the 30% of each region’s ocean territory. See: <https://sustainablefisheries-uw.org/open-letter-to-congress-from-fishery-scientists/>

⁵ The nature and scale of these conservation and fishery management area-based measures were reviewed in a report prepared by the eight Regional Fishery Management Councils working through the Council Coordinating Committee. See: <https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/6489c43523c0b1595a5b8d54/1686750280097/Evaluation-of-Conservation-Areas-Report-2023.pdf>

⁶ Essential Fish Habitat designations are one of several leading area-based management tools utilized by the Regional Fishery Management Councils. For more on EFH designations see: <https://www.fisheries.noaa.gov/national/habitat-conservation/essential-fish-habitat>

⁷ <https://www.fisheries.noaa.gov/contact-directory/science-centers>

ensure that decisions are based on the best available science and the balancing of competing objectives. Area-based management actions adopted by the Councils—which often include significant area closures⁸—necessitate widespread stakeholder engagement and are therefore durable and successful. Proclamations to designate Marine National Monuments, on the other hand, are among the most sweeping exercises of unilateral presidential authority in all of domestic policymaking. The absence of established process risks decisions that fail to adequately incorporate all relevant information and impacts. The unilateral establishment of prior Marine National Monuments has also alienated stakeholders in ways that have fundamentally undermined legitimacy and thus durability.⁹ We believe that the use of this authority to create large-scale MPAs has proven itself to be an unacceptable mechanism for presidential action.

Any action of this kind before January 20 would come at an especially difficult time. Most of our sector has faced acute economic hardship in recent years.¹⁰ Furthermore, in many regions fishermen have been confronting federal government actions that encourage offshore wind development in some of America’s most historically important fishing grounds. Against this backdrop, the mere threat of Marine National Monuments creates harmful business uncertainty. New designations would further harm our sector, needlessly constraining fishing activity despite U.S. fisheries delivering enormous public benefits and complying with the most rigorous management system in the world. In this context, any move to create or expand a Marine National Monument anywhere in the U.S. EEZ before you leave office will be met by significant opposition of the fishing and seafood sector and coastal communities.

Finally, we believe that excessive reliance upon the Antiquities Act to create or expand MPAs will be viewed negatively by the Courts. The March 2021 statement of Chief Justice Roberts

⁸ Dozens of Council actions in recent years illustrate the continuing scale of habitat conservation efforts at the regional level. In 2017, for example, a new Deep Sea Coral Protection Area spanning more than 38,000 square miles was established off the Mid-Atlantic Coast with support from both commercial fishermen and environmentalists. The following year, the Pacific Fishery Management Council voted to protect more than 145,000 square miles of sensitive habitats along the West Coast, after a years-long cooperative process initiated by the fishing industry and environmental organizations. In 2020, the New England Fishery Management Council adopted sweeping new measures for the conservation of deep-sea corals in the region, spanning more than 25,000 square miles south of Georges Bank. Later that same year, a Gulf of Mexico Fishery Management Council Amendment using the Essential Fish Habitat provisions of the MSA became final, extending new protections to 500 square miles of deep-sea coral habitat spanning 13 reefs and canyons stretching from Texas to the Florida Keys. Meanwhile, the North Pacific Fishery Management Council has established 194 area-based ecosystem conservation measures spanning more than 63 percent of the one million square nautical miles of ocean territory under its jurisdiction. These and hundreds of other existing area-based measures are designed by the Councils to achieve stated conservation objectives relating to fisheries and marine ecosystems.

⁹ This was perhaps most starkly illustrated by Presidential Proclamation No. 10049, 85 Fed. Reg. 35793 (2020), through which restrictions created by the Northeast Canyons and Seamounts Marine National Monument were removed in response to stakeholder requests. See: <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-modifying-northeast-canyons-seamounts-marine-national-monument/>

¹⁰ To take just one example, NOAA has estimated that the Alaska seafood industry suffered a \$1.8 billion loss in 2022-23, resulting in more than 38,000 job losses nationwide and a \$4.3 billion loss in total U.S. output. See: <https://www.fisheries.noaa.gov/feature-story/economic-snapshot-shows-alaska-seafood-industry-suffered-18-billion-loss-2022-2023>

commenting on the denial of certiorari in *Massachusetts Lobstermen’s Association v. Raimondo* includes important insights and raises significant questions:

A statute permitting the President in his sole discretion to designate as monuments “landmarks,” “structures,” and “objects”—along with the smallest area of land compatible with their management—has been transformed into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea. ... The scope of the objects that can be designated under the Act, and how to measure the area necessary for their proper care and management, may warrant consideration [by the Supreme Court]—especially given the myriad restrictions on public use this purely discretionary designation can serve to justify.¹¹

In summary, we believe that the negative impacts Antiquities Act designations threaten to coastal communities, fishery participants and U.S. seafood producers—together with the important concerns raised by Chief Justice Roberts—are compelling reasons to avoid any such designations during the remainder of your time in office.

Thank you for considering our perspectives on this critical issue.

Sincerely,

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¹¹ https://www.supremecourt.gov/opinions/20pdf/20-97_jiel.pdf, p.3.

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